

## **TOWNSVILLE OCEAN TERMINAL**

# **ENVIRONMENTAL IMPACT STATEMENT SUBMISSION RESPONSE**

## **RESPONSE TO PORT USERS**

**August 2008**

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## PORT USERS GROUP

Note: This submission response document has been prepared by means of duplicating the individual submission received and inserting response clauses where relevant.

## SIX KEY ISSUES REQUIRING ADDRESS

### Issue 1 - Economic Impact on Current and Future Port Operations

- Proponents' analysis is inadequate.
- *Proponent needs to demonstrate that the proposed residential development will not result in adverse economic effects on future port operations, e.g. operational cost increases and/or curfews.*

## RESPONSE

Townsville Port and Port users are achieving environmental performance standards that have not, and are not, expected to create unacceptable nuisance impacts on nearby residents. This is the broad conclusion from detailed technical investigations of air quality and acoustic impact issues.

A detailed report examining the critical issues impacting on the compatibility of the port and the proposed residential precinct has been prepared (Transpac Consulting Report: *Port Compatibility – Impact of Proposed Townsville Ocean Terminal and Breakwater Cove Precinct on the Future Activities and Expansion of Townsville Port* – Appendix A31 in Volume 2). This Report considers the evidence on amenity issues provided by technical specialist reports, and evaluates the extent to which available evidence supports concerns about potential incompatibility.

Based on the findings of the technical reports, the Report on Port Compatibility finds that on all key measures of nuisance disamenity – noise, dust nuisance and odour – the Townsville Port and its users are performing at levels that for the most part do not compromise acceptable nuisance standards. Potential exceedances are rare and infrequent, relating to noise emanating from the loading and unloading of motor vehicles, the blasting of ship's horns and the odour impacts associated with the loading of live cattle. Nuisance dust levels are well within acceptable EPA guidelines. Where exceedances have been recorded or are anticipated, the Report finds that satisfactory mitigation measures can be implemented.

The Port and nearby residences have co-existed largely harmoniously and this is demonstrated by the low level of recorded complaint activity. Records from Townsville Port Authority and EPA were updated and examined. Not only are the number of complaints low – with a total of 61 complaints recorded by TPA on dust, noise and vehicles between 2001 and 2007 – where data was available on the origin of complaints, the evidence shows that the majority come from residents of South Townville (rather than to the west of Ross Creek in the vicinity of the proposed Breakwater Cove precinct). The Report concludes that since 2001 there have been 2.38 complaints per 1,000 persons within the nearby population catchment to the Port and 0.54 environmental nuisance complaints per 1,000 persons.

The Report further examined complaint activity in the context of port activity. The analysis found that the patterns of complaint activity did not appear to have any strong relationship with measured port activity (e.g. trade throughput and capital works expenditure), indicating that complaint activity since 2001 did not exert any effect on Port performance.

The near negligible presence of adverse community experiences towards the Port are reflected in the above-average property values achieved for properties located west of Ross Creek, in close proximity to the Port. This data was originally presented in the EIS, but is worth re-evaluation as high property values reflect properties of comparatively high desirability and residential amenity. Had the Port been a significant disamenity to nearby residents, property prices in both absolute terms and in terms of growth would have reflected this by being below the levels achieved for Townsville as a whole. Combined with feedback gained from residents living in close proximity to the Port, the objective property value data is strong evidence that living in relative proximity to the Port is seen as desirable and offering a net positive amenity to residents.

Given these historic experiences, the analysis concluded by estimating potential complaints emanating from Breakwater Cove. The study concluded that on the basis of current and anticipated Port environmental performance, the Proponent expects no more than 5 complaints per year from Breakwater Cove residents for noise, dust and odour issues.

As a consequence of the largely benign nature of the amenity impacts from the Port, the risk of adverse economic impacts on future port operations is extremely low.

A number of submissions raised concerns about the potential for higher environmental compliance costs for the Port and/or port users as a result of the project. These concerns have been assessed in detail in a number of the expert reports. Specifically, the Transpac Consulting Report: Port Compatibility – especially Sections 2.3 and 2.4 (Appendix A31 in Volume 2) and the Transpac Consulting Report: Potential Economic Impacts (Brought Forward Costs) (Appendix A28 in Volume 2).

These assessments conclude that the risk of higher environmental compliance costs for either the Port or port users is extremely low as a result of the project. Such risks relate particularly to the potential for future residential complaints to escalate, resulting in the need for the Port or users to incur costs to improve environmental performance outcomes and/or a change in the relevant regulatory, legislative or licensing standards that govern environmental performance requirements.

As noted above, the assessment of historic complaints and estimates of potential risk of residential complaints from future residents indicates that the risk is extremely low. Further, such risks are to be managed through a range of mechanisms embedded in the PPA including disclosures of potential impacts to future residents as well as a complaints management method that sees any residential complaints being channelled via the Body Corporate (rather than direct to the Port).

Future expansion activities at the Port – either undertaken by the Port or port users – are likely to be driven by market conditions and the commercial merits of the investment. It should be noted that all Port capital investments in excess of \$2m require notification to shareholding Ministers, and investments of greater than \$5m require Shareholding Ministerial approval. These approvals will be provided on the basis of the commercial merit of the proposed investment, taking into account the potential of the investment to enhance shareholder value.

Under these circumstances, the overall assessment is that the likelihood of higher environmental compliance costs for either the Port or port users as a result of the project is considered to be low.

Indeed, this confidence in the compatibility of the Port and the Breakwater Cove precinct reflects the views expressed by Townsville Port Authority in its 2006-07 Annual Report which states (p. 20):

*The Authority is working closely with City Pacific Ltd and the Queensland Government to ensure that adequate port protection mechanisms are in place for the Breakwater Cove residential development which will be located adjacent to the Ocean Terminal facility. These mechanisms, which will closely reflect those agreed for residential developments surrounding the Breakwater Marina, will ensure that residents are aware of potential amenity impacts, that building design appropriately addresses impacts and that legal protections are in place to ensure the ongoing operations and growth of the Port of Townsville.*

## Issue 2 - Residential Development Incompatibility with an Industrial Port

- Unacceptable planning - most other Australian States require a minimum separation distance of 1000 metres between bulk material loading/unloading and fuel importation facilities and residential homes (see attached Table and Figures).

Berth 1 is a fuel importation facility and is less than 500 metres from the proposed residences;

Berth 7 is a major bulk material facility and is less than 500 metres from the proposed residences; and

Berth 10 is a major livestock loading facility and is only 250 metres from the proposed residences.

- Attached Maunsell report (attachment C) cites numerous examples of conflict resulting from residential encroachment on industrial ports.
- *Proponent needs to demonstrate relevant successful examples of compatibility between residential developments and expanding bulk material ports.*

## RESPONSE

A report has been prepared examining port/residential interface issues in 16 Australian and international port cities (Appendix A32 in Volume 2). The report shows that the vast majority of cases, residents are located well within 700m of port berths; and that in some cases – specifically Mackay and Sydney – residents are located within 300m of port berths. The case studies confirm that all Australian ports are regularly dealing with port-residential interface issues. In some cases, these challenges are brought about as a result of residential expansion towards port lands/facilities while in others they result from the encroachment of port activities towards existing residential areas.

In these circumstances, it is widely recognised that all stakeholders have a stake in achieving a workable balance between the needs and expectations of all impacted users. A suite of management measures is implemented in all cases, and reflecting their respective idiosyncrasies, the interface regimes include a combination of measures including, but not limited to, the use of spatial buffers, physical buffers, design mitigation at source and at receptor, sustained robust port-community engagement mechanisms and in some cases, active strategies to reduce disamenities by modifications to port activities.

The case studies demonstrate that ports and residents can coexist, and there are a myriad of ways in which such coexistence can be negotiated and realised. On the basis of these experiences, the Proponent is confident that an appropriate range or suite of interface management initiatives can be implemented to ensure ongoing compatibility between the Townsville Ocean Terminal precinct and the Townsville Port.

Together with the findings of the case studies report (Transpac Consulting Report: *Case Studies on Seaports and Residential Interface Experiences in Australia, Singapore and New Zealand* – (Appendix A32 in Volume 2), the Proponent is confident that the Breakwater Cove precinct can be developed and in fact reflects positively on the environmental performance of the Port of Townsville and Port users. This is consistent with the historical evolution of the FDA development concept, which was originally promoted by the Port of Townsville.

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### Issue 3 - The Proponent has not Considered Alternative Sites

- Proponent has failed to consider alternative locations for the residential development, e.g. Kissing Point.
- An alternative design resulting from a Government commissioned study by SMEC was not considered.
- *Proponent needs to prove that there are no alternative sites or no alternative means of funding a cruise ship terminal.*

### RESPONSE

The proposed development site was created by an Act of Parliament (BICA 1984), and has as such been earmarked for a substantial period of time for future development activity. Further, it should be noted that original concept plans for the FDA – in particular the scheme promoted by Townsville Port Authority in 2002 – incorporated significant permanent and short-term residential uses, together with more intense commercial retail uses than is contemplated in the scheme that is subject to the present EIS. In addition, residential uses were much closer to the Port than in the current masterplan.

The present development scheme is an integrated vision. The project is the result of the State seeking to build an Ocean Terminal at the Port in conjunction with a commercial element to fund the terminal. This proposal is the result of the integration of the State's objectives with those of the Developer. No other option was possible for the integrated solution required by the State and reflected in the Development Agreement between it, the Developer and Tabcorp.

The development agreement entered into between the Proponent and the State includes a range of financial requirements and commitments, which were developed and finalised through negotiations between the Parties. Naturally as part of this process, a range of funding options were considered.

It would be inappropriate for the Proponent to speculate as to the State's rationale for its policy to proceed with the proposed integrated project as it is now understood, including funding means. That is rightfully a matter for the State.

The EIS provided a summary of the events that gave rise to the preparation of the EIS which included an evaluation of alternative proposals and various land use alternatives in the preparation of the FDA Scheme.

There are no alternative sites. The Ocean Terminal must be part of the Port, and the adjoining residential development is integral to the project under the terms of the Development Agreement between the Developer, Tabcorp and the State. The TOT Project proposal arising from this agreement is the framework for the EIS studies.

#### Issue 4 - Inadequate Baseline Monitoring

- Dust/particulate monitoring over a 12 month period to provide an accurate representation of the seasonal variations has not been undertaken.
  - Minimal noise monitoring undertaken (2 days).
  - Cumulative impacts or increased incidence of impacts as a result of increased port operations has not been considered adequately
- *Proponents monitoring must be undertaken to a level acceptable to EPA requirements and to a level to adequately inform potential future residents.*

#### RESPONSE

This issue is addressed in responses to submissions made by State Agencies, including the EPA. Refer to supplementary reports at Appendices A1-A5 and A6 in Volume 2 for further details on Air Quality and Noise monitoring activities and outcomes.

The adequacy of the Port emission monitoring is discussed in the relevant supplementary reports at Appendices A1-A5 in Volume 2.

The data collected and reported in the EIS has been supplemented by the monitoring that continued beyond the preparation of the EIS. It has also been compared with the data collected by other agencies such as the EPA and TPA.

The metals content analysis of the deposited dust has been considered following on the analysis of a single round of investigation of the August 2007 deposition sample. The results for the casino carpark station and Jezzine Barrack show the lead content levels were 0.104 and 0.038 mg/m<sup>2</sup>/day respectively. Both were well within the acceptable criteria. Further modelling of metals emission from the BHP lead oxide loading facility show that lead concentrations at the TOT Project and other residential areas close to the Port fall well below the Environmental Protection Air Policy criteria.

In regard to the air borne dust that might pass across the TOT Project site, the results of PM<sub>10</sub> monitoring done by the Port at Berth 10 (the closest berth to the TOT Project site at approximately 150m) and TSP monitoring done by the EPA at the Coast Guard carpark a few hundred metres south of the TOT Project site, were analysed and discussed in more detail in the Supplementary Particulate Dust Report. The results of the PM<sub>10</sub> and TSP monitoring show that at both locations the air borne dust levels are within the established acceptable ranges.

The particular activity of scrap metal loading was not considered in the EIS. Subsequently, a Noise Consultant undertook a specific monitoring of scrap metal loading when an opportunity arose in June 2008 and found the noise levels to be as reasonable as the theoretical analysis had predicted (< 75db maximum peak levels).

The Proponent disputes the monitoring was inadequate, indeed the results from the monitoring show a consistent picture of these amenity impacts that further monitoring will affirm. Notwithstanding this further monitoring is proposed both during construction and into the operations phase. The results of the monitoring will be shared with the Port and its users to supplement the results of testing that they are now undertaking.

### Issue 5 - Unproven Nature/Impact of the Proposed Port Protection Measures

- No known successful examples of comparable Port Protection Measures as proposed by the Proponent.
- The level of monitoring is insufficient to inform the disclosure statement proposed as a part of the Port Protection Measures.
- *Proponent must demonstrate the long term veracity of the proposed PPM's, or at the very least, accept financial responsibility for their failure.*

### RESPONSE

The PPMs are unique, they are not however unusual. Contemporary land use planning is all about optimising utilisation by employing tools to address compatibility of conflicting uses. Separation and buffers are being replaced with more sophisticated mitigation devices as envisaged in the PPMs. These measures are being used in other locations, in CBD residential developments to mitigate light impacts from nearby office towers, along huge order roads to mitigate road noise impacts and around airports to mitigate the impacts from aircraft.

The Proponent will continue to work closely with the State and Townsville Port Authority to ensure the Port Protection Measures (PPMs) are robust and achieve the expectations as outlined by TPA, when it stated in its 2006-07 Annual Report:

*The Authority is working closely with City Pacific Ltd and the Queensland Government to ensure that adequate port protection mechanisms are in place for the Breakwater Cove residential development which will be located adjacent to the Ocean Terminal facility. These mechanisms, which will closely reflect those agreed for residential developments surrounding the Breakwater Marina, will ensure that residents are aware of potential amenity impacts, that building design appropriately addresses impacts and that legal protections are in place to ensure the ongoing operations and growth of the Port of Townsville (p. 20 – emphasis added).*

Ongoing technical assessments will be undertaken as details of the PPMs are drafted and reviewed by relevant authorities.

The baseline data is helpful to understand the extent of the impacts and will influence the detail of the mitigation device. The monitoring undertaken has recorded amenity impacts that are largely benign and therefore the mitigation measures will be similar to those employed in other mixed land use localities to suit the predicted and infrequent exceedances. Further and ongoing monitoring has been proposed in discussions with the State, which will provide a much greater body of data for the disclosure statement.

If the background data changes over time, then the PPM's can also change.

The important thing to keep in mind is that, unlike a lot of well established residential developments, along busy roads, the Breakwater Cove residences will have mitigation measures incorporated into the structures by way of special building codes.



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## Issue 6 - Legality of Proposed Covenants

- *Land Titles Act 1994 and Land Act 1994* - these Acts states that a covenant may only be registered by the State or another entity representing the State, or a local government - the Proponent does not seem to qualify for this category.
- *Body Corporate and Community Management Act 1997*- it is not clear how a community management statement can protect the Port Users from any future form of potential litigation.
- *Proponent must demonstrate the legality of the proposed covenants and demonstrate how they will prevent residents from acting outside the proposed PPM, i.e. complaining directly to Port Users of a third party (such as EPA, Townsville Bulletin, etc.).*

## RESPONSE

The Port Protection Measures include a Deed of Covenant and Release in favour of the State and the Port.

The covenants are not registered under the Land Titles Act (or the Land Act). They act as a contract between the buyer and the State and the Port in which the buyer agrees to abstain from actions. The Port Protection Agreement provides a robust range of measures to protect the Port from vexatious complaints or challenges. Australia is however a free democracy and to completely curtail the ability of its citizens to voice their views would be a denial of that freedom. The PPA uses full disclosure to buyers, education of residents and the control afforded by the CMS plus contractual commitments of both the owners, residents and the body Corporate to minimise the possibility of complaints and disruption to Port operations.